IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 177 OF 2002

Chairman, Ramabai Magasvargiya
Mahila Grahak Sanstha ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Ashok Misal, Advocate, i/b. Mr. P.A.Pol, Advocate, for the petitioner.
Mr. R.M. Patne, AGP, for Respondents Nos.1 to 4.

CORAM: J.H.BHATIA,J.

DATE : 31st August, 2007.

P.C.

1. Rule. With consent of the parties, Rule made returnable forthwith and taken up for final hearing immediately.

2. Heard the learned Counsel for parties. Perused the Government Resolution dated 9.6.2000 in

respect of allotment of fair price shops as also the affidavit filed by one Suhas Dattatraya Shewale, Section Officer, Food, Civil Supplies and Consumer Protection, Government of Maharashtra.

3. There is no dispute that on 6.3.1999, respondent No.4 - S.D.O., Panvel, had invited applications for allotment of fair price shop at Village Gudage, Taluka Karjat, District Raigad. On 19.6.2000, the petitioner, which is a Co-operative Society and was one of the applicants for allotment of shop was found to be most eligible for the shop. The faitr price shop was allotted to the petitioner. Respondent No.5, who was also one of the applicants, filed a Revision Application which was rejected by respondent No.3, Deputy Commissioner (Supply). Thereafter, respondent No.5 filed another revision application before respondent No.2, Hon'ble State Minister, Food and Civil Supplies Department. Keeping the revision application pending for a long period of ten months, respondent No.2 allotted additional fair price shop to respondent No.5. According to the petitioner, sufficient units were not available for allotment of second shop and, consequently, no applications were invited by issuing advertisement for that purpose. According to the petitioner, due to allotment of the second shop, the

business available to the petitioner was adversely affected. By this petition, the petitioner seeks to set aside the allotment of the second shop by respondent No.2 in favour of respondent No.5.

4. The relevant G.R. dated 9th June, 2000 provides for norms for the allotment of fair price shop in different areas. It says that in rural areas, if the fair price shop is to be run by a co-operative society or even by a private person, the minimum units available should be 1000 and maximum units which may be attached to the shop may be 4000. According to the petitioner, when the additional shop was allotted to respondent No.5, sufficient units were not available. However, as per the affidavit filed on behalf of the State, it appears that at present 3604 units are attached to the fair price shop run by the petitioner, while 3645 units are attached to the shop run by respondent No.5. Taking into consideration this figure, the total units available in the Village are 7249 and taking into consideration the norms, all these units cannot be attached to one shop. There has to be at least two shops. Therefore, no valid objection can be taken to the existence of the second shop.

5. However, it appears from the affidavit that in the revision filed by respondent No.5, respondent No.2,

the State Minister, directly allotted one additional fair price shop to respondent No.5 without following the procedure laid down under the Rules which require that advertisement should be issued and applications should be invited for allotment of fair price shop.

6. Learned Counsel for the petitioner has relied upon the Judgment in Writ Petition No. 2246 of 1998 (Shri Suryakant Govindrao Shinde vs. State of Maharashtra & Ors.) decided by the Division Bench of this Court on 22.3.2005 in support of the contention that additional shop could not have been allotted by the revisional authority while exercising the powers of revision and also that the advertisement has to be issued for the fair price shops to be allotted. If the advertisement was only for allotment of one shop which was already allotted to the petitioner, the additional shop could not have been allotted to respondent No.5 as per the rules. If the number of the units was more than prescribed by the rules, another advertisement could be issued calling applications for allotment of second shop, but it was not followed. In view of this, the petitioner has to succeed in respect of allotment of the additional shop to respondent No.5. However, fact remains that the additional shop allotted to respondent No.5 is actually running business and catering services to the people of that village for last about six years.

As pointed out above, as per the norms, at present at least two shops must be provided for that village and, therefore, there is immediate need to advertise and call applications for allotment of second shop.

7. The learned AGP makes a statement that respondent No.4 - S.D.O. Panvel shall commence the process of inviting applications for allotment of additional shop within a short time and, in any case, the process of allotment of the second shop would be completed within three months from this date. He only requests that taking into consideration the present number of units available in the village, the second shop which is presently being run by respondent No.5, may be allowed to continue for a period of three months so that the people of the village do not suffer hardship. Taking into consideration the public interest, I find that it will be in the public interest to accept the statement made by the learned AGP on behalf of the State.

8. In view of the above, the Petition is allowed. It is declared that allotment of additional fair price shop by respondent No.2 in favour of respondent No.5 was against the rules. However, in view of the statement made by the learned AGP on behalf of the State, in the larger public interest and particularly the interest of

the villagers who are being presently served by respondent NO.5, the fair price shop is allowed to be run by respondent NO.5 for a period of three months from this date or the date of allotment of second shop after following prescribed procedure, whichever is earlier. Respondent No.4, SDO, Panvel, shall commence the process for allotment of second shop as per rules at the earliest and shall complete the allotment within three months from this date. On allotment of the second shop, even if it is before the expiry of three months, the shop presently run by respondent No.5 shall be closed. It is made clear that respondent No.5 shall be at liberty to participate in the process for allotment of the second shop like any other person.

Rule is made absolute accordingly.

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(J.H.BHATIA,J.)